



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY VALLEY REGIONAL OFFICE

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STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO TOWN OF STANLEY FOR STANLEY STP AND COLLECTION SYSTEM VPDES Permit No. VA0063964

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Town of Stanley, regarding the Stanley STP and collection system, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "CTC" means Certificate to Construct.
3. "CTO" mean Certificate to Operate.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "DMR" means Discharge Monitoring Report.
7. "Facility" or "Plant" means the Stanley Sewage Treatment Plant located on Route 340 west of Stanley in Stanley, Virginia, which treats and discharges treated sewage and other municipal wastes, for the residents and businesses of the Town of Stanley.
8. "I&I" means Inflow and Infiltration.
9. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
10. "O&M" means operations and maintenance.
11. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
12. "Permit" means VPDES Permit No. VA0064394, which was issued under the State Water Control Law and the Regulation to Stanley on October 1, 2006 and which expires on September 30, 2011.
13. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.
14. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.

15. "Stanley" or "Town" means the Town of Stanley, a political subdivision of the Commonwealth of Virginia. Stanley is a "person" within the meaning of Va. Code § 62.1-44.3.
16. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.
17. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
18. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
19. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
20. "STP" means the sewage treatment plant.
21. "Va. Code" means the Code of Virginia (1950), as amended.
22. "VAC" means the Virginia Administrative Code.
23. "VPDES" means Virginia Pollutant Discharge Elimination System.
24. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Facts and Conclusions of Law

1. Stanley owns and operates the Plant and the sewage collection system serving the Town in Page County, Virginia. The Permit allows Stanley to discharge treated sewage and other municipal wastes from the Plant, to South Fork Shenandoah River, in strict compliance with the terms and conditions of the Permit.
2. South Fork Shenandoah River is located in the Potomac River Basin. South Fork Shenandoah River is listed in DEQ's 303(d) report as impaired for E. coli and Fecal Coliform, for mercury in fish tissue (fish consumption advisory), and for not meeting the General Standard (Benthics) for aquatic life.
3. Presently, Stanley is under a Consent Order that became effective July 5, 2005 ("2005 Order"), to address sludge handling problems at the STP and I&I problems in its collection system. The 2005 Order required the construction of new sludge handling equipment and to conduct certain I&I investigations and repairs.
4. Stanley has completed the sludge handling improvements and many of the repairs of the high priority I&I problems identified to date. However, Stanley continues to experience significant I&I events.

5. The design capacity of the Facility has been rated and approved as 0.30 MGD. As of March 2007 (March, February and January 2007), the effluent flows from the Facility exceeded design capacity for three consecutive months. The Facility has also experienced maximum daily flows which exceeded 1.0 MGD during certain weather conditions. These exceedances of the design capacity appear to coincide with periods of wet weather.
6. On July 6, 2009, DEQ received a pollution complaint regarding fish kills in two landowner's ponds lying within the drainage of an unnamed tributary of Mill Creek.
7. Mill Creek is also listed in DEQ's 303(d) report as impaired for E. coli and fecal coliform. The source of the impairment is attributed to agriculture, non-point source discharges and wildlife other than waterfowl contamination.
8. On July 6, 2009, DEQ staff investigated the complaint and documented an unpermitted discharge of sewage from the area of Stanley's Aylor Grubbs Road pump station to the ponds. During the investigation, DEQ determined that the unpermitted discharge of sewage entered an unnamed tributary to Mill Creek and the ponds causing fish kills in the ponds.
9. On July 7, 2009, Stanley reported that a force main break occurred at the Aylor Grubbs Road pump station on June 29, 2009.
10. On July 8, 2009, during DEQ's continuing investigation, staff noted an unknown number of fish were killed on the ponds as a result of the unpermitted discharge of sewage.
11. On July 10, 2009, Stanley submitted a letter of explanation for the June 29, 2009, unpermitted discharge at the Aylor Grubbs Road pump station. The Town indicated that a significant leak occurred as a result of severe break in the force main along Aylor Grubbs Road. In order to make repairs, it was necessary to turn off the pump station which discharges wastewater through the force main. The wet well of the pump station filled and overflowed before the force main could be placed back into service. The wastewater overflowed into an unnamed tributary of Mill Creek, a tributary of the South Fork of the Shenandoah River.
12. On August 13, 2009, VRO issued Notice of Violation NOV number W2009-08-V-0003 to Stanley for the unpermitted discharge of sewage to an unnamed tributary of Mill Creek resulting in a fish kill. The NOV also cited the Town with failing to report the unpermitted discharge in a timely manner in compliance with permit and statutory/regulatory requirements.
13. On August 26, 2009, Department staff met with representatives of Stanley to discuss the NOV's violations, the problems that led to the violations and corrective actions needed to address the problems. Stanley indicated that there have been a number of force main breaks in the first 1000 foot section of the force main near the Aylor Grubbs Road pump

station and it was investigating potential causes of such breaks. DEQ requested the Town submit a plan and schedule of corrective actions to address the force main problems and I&I corrective actions.

14. By letter dated September 28, 2009, Stanley submitted to DEQ a plan and schedule of corrective actions to address the force main issues that resulted in the unpermitted discharge at the Aylor Grubbs pump station.
15. By letter dated November 23, 2009, Stanley submitted to DEQ a plan and schedule of corrective actions to further address the Town's collection system I&I problems.
16. Va. Code § 62.1-44.5 states that: "[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances."
17. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
18. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.
19. The Department has issued no permits or certificates to Stanley other than VPDES Permit No. VA0064394.
20. The unnamed tributary of Mill Creek is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.
21. Based on the results of July 6 and July 8, 2009 pollution complaint investigations, the July 10, 2009 letter, the August 26, 2009 meeting, and a file review, the Board concludes that Stanley has violated the Permit and Va. Code § 62.1-44.5 and 9 VAC 25-31-50, by discharging untreated sewage and municipal wastes from the collection system while concurrently failing to comply with the conditions of the Permit, as described in paragraphs C(6) through C(10), above.
22. Stanley is to conduct certain I&I corrective actions to address previously identified prioritized collection system deficiencies utilizing stimulus monies obtained through the State of Virginia. The Town may only use those monies to correct specific problems previously identified that were included in the Town's approved funding request proposal. In addition to those actions, this Order requires the Town to continue addressing I&I problems as incorporated into Appendix A of this Order.
23. In order for Stanley to return to compliance, DEQ staff and representatives of Stanley have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Stanley, and Stanley agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of **\$12,285** within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Stanley shall include its Federal Employer Identification Number (FEIN) (54-6002894) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

3. This Order cancels and supersedes the Consent Special Order issued to the Town of Stanley on July 5, 2005.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Stanley for good cause shown by Stanley, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Stanley admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Stanley consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Stanley declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Stanley to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Stanley shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Stanley shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Stanley shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the Stanley intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.

10. This Order shall become effective upon execution by both the Director or his designee and Stanley. Nevertheless, Stanley agrees to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until:

- a. Stanley petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Stanley.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Stanley from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Stanley and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of Stanley certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Stanley to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Stanley.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

By its signature below, Stanley voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2010.

Amy T. Owens, Regional Director
Department of Environmental Quality

Town of Stanley voluntarily agrees to the issuance of this Order.

Date: 3/05/10 By: Terry A Pettit, Town Manager
(Person) (Title)
Town of Stanley

Commonwealth of Virginia

City/County of PAGE

The foregoing document was signed and acknowledged before me this 5th day of
MARCH, 2010, by TERRY A. PETTIT who is

TOWN MANAGER of Town of Stanley on behalf of the Town of Stanley.

NORMA CUBBAGE
Notary Public

158059
Registration No.

My commission expires: 12/13/12

Notary seal:

APPENDIX A SCHEDULE OF COMPLIANCE

Force Main repairs

1. **By no later than March 15, 2010**, Stanley shall go to bids for the approved force main upgrades.
2. **By no later than April 15, 2010**, Stanley shall award the contract and begin construction of the force main upgrades.
3. **By no later than August 1, 2010**, Stanley shall complete construction of the approved force main upgrades and request a CTO by submitting the proper forms.

I&I Corrective Actions

Stanley shall conduct collection system rehabilitation work on the following schedule (Item 5 through Item 11 below). DEQ recognizes that the prioritization of the individual items to be accomplished each year in this schedule as contained in its November 23, 2009 plan and schedule may need to change during the rehabilitation process based on new information. DEQ agrees that Stanley may alter/substitute individual items into the schedule below. Stanley shall notify and submit to DEQ for review and approval any proposed reprioritization(s) and provide a basis for the revision. Stanley shall conduct the collection system rehabilitation work utilizing the following construction schedule:

4. **By December 31, 2010**, Stanley shall complete the I&I repairs prioritized for completion in 2010 in accordance with its November 23, 2009 plan and schedule.
5. **By March 1, 2011 and annually thereafter**, Stanley shall submit to DEQ for review and approval a report describing the success of the I&I corrective actions conducted to date in reducing excessive I&I flows. This report should describe the amount of flow reduction in terms of gallons per day or percentile reduction. Stanley shall respond to any comments concerning the report within 30 days of receipt of written comments.
6. **By December 31, 2011**, Stanley shall complete the I&I repairs prioritized for completion in 2011 in accordance with its November 23, 2009 plan and schedule
7. **By December 31, 2012**, Stanley shall complete the I&I repairs prioritized for completion in 2012 in accordance with its November 23, 2009 plan and schedule.
8. **By December 31, 2013**, Stanley shall complete the I&I repairs prioritized for completion in 2013 in accordance with its November 23, 2009 plan and schedule.

9. **By December 31, 2014**, Stanley shall complete the I&I repairs prioritized for completion in 2014 in accordance with its November 23, 2009 plan and schedule.
10. **By December 31, 2015**, Stanley shall complete the I&I repairs prioritized for completion in 2015 in accordance with its November 23, 2009 plan and schedule.
11. **By March 1, 2015**, Stanley shall submit to DEQ for review and approval a final report describing the success of the I&I corrective actions conducted to date in reducing excessive I&I flows. This report should describe the amount of flow reduction in terms of gallons per day or percentile reduction. Stanley shall respond to any comments concerning the report within 30 days of receipt of written comments. For informational purposes, Stanley shall include in the report its plan for conducting future ongoing I&I work and the annual budget for the next three years that will be allocated to conduct that work. Should Stanley demonstrate that it has met the requirements of the Order, it may request the termination of the Order.
12. Stanley shall submit quarterly progress reports to DEQ, with the first report being due **July 10, 2010**. Subsequent Progress Reports will be due by **October 10, January 10, April 10, and July 10**, along with the Facility's Discharge Monitoring Report until the cancellation of this Order. The quarterly progress reports shall contain:
 - a. a summary of all work completed since the previous progress report in accordance with this Order;
 - b. a projection of the work to be completed during the upcoming quarterly period in accordance with this Order; and
 - c. a statement regarding any anticipated problems in complying with this Order.
13. No later than **14 days** following a date identified in the above schedule of compliance Stanley shall submit to DEQ's Valley Regional Office a written notice of compliance or noncompliance with the scheduled item. In the case of noncompliance, the notice shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled item.

14. **DEQ Contact**

Unless otherwise specified in this Order, **Stanley** shall submit all requirements of Appendix A of this Order to:

Steve Hetrick
Enforcement Specialist Sr.
VA DEQ –Valley Regional Office
P.O. Box 3000
Harrisonburg, VA 22801
(540) 574-7833 Phone
(540) 574-7878 Fax
Steven.hetrick@deq.virginia.gov